

BOOK REVIEW
BANKING LAW IN AUSTRALIA
BY ALAN TYREE*; AND
BANKING LAW IN AUSTRALIA
BY ROBIN EDWARDS**

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Given that there is a general paucity of textbooks on Australian banking law, lecturers in this area eagerly await and receive any new textbook as well as new editions of existing texts. LexisNexis recently published new editions of two banking law textbooks in its stable: the classic *Banking Law in Australia* by Alan Tyree, and a companion text by Robin Edwards, also entitled *Banking Law in Australia*. The latter forms part of the LexisNexis Questions & Answers series, and is intended to be used as a companion text to Tyree's standard textbook.

Tyree's *Banking Law in Australia* is a popular and well-respected student text. One of its key strengths is that it covers an important and wide range of topics in banking law including the regulatory framework of Australian banks, the banker-customer relationship, bills of exchange, cheques, electronic banking, documentary credits, consumer protection and lending.

The new edition incorporates important but modest updates with regard to consumer protection measures introduced by the *Australian Consumer Law*¹, specifically regarding unfair contract terms. It also includes a short overview of the effect of the new *Personal Properties Security Act*² on banks, and some comments on the effect of the global financial crisis. Given the importance of these topics to banks, more in-depth coverage will be welcomed in future editions. Further, the decline in the use of cheques, and the increase in the use of electronic payments, may also warrant a reconsideration of the content of future editions of this book. A more

* Alan L Tyree, *Banking Law in Australia* (LexisNexis, 2011, 7th ed).

** Robin Edwards, *Banking Law in Australia* (LexisNexis, 2012, 2nd ed).

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¹ *Australian Consumer Law in the Competition and Consumer Act 2010* (Cth).

² *Personal Property Securities Act 2009* (Cth).

comprehensive overview of the regulatory framework and international aspects of domestic regulation will also be welcomed. The introduction of the ePayments Code in 2011 has the effect that parts of the text dealing with the previous Electronic Funds Transfer Code now require revision.

Tyree's book remains an excellent choice as a student text. It is characterised by a clear, easily readable writing style and effective coverage of key banking law topics. Case authority is well integrated into the text, and the new improved use of headings and numbering makes it easy for readers to navigate the text. The book is also well suited as a reference book for practitioners.

Robin Edwards's *Banking Law in Australia* is the second edition of this text.³ It focuses mostly on the law of cheques, the legal issues relating to the banker-customer relationship and to a lesser extent on a few other topics.

In the preface, Edwards states that it is his objective to improve students' understanding of banking law through problem-solving exercises, rather than writing essays.⁴ Accordingly, the focus of the book is on problem-style questions, with answers and comments, as well as some general discussion of legal principles. Problem-solving skills will be useful in law exams, which frequently feature problem-style hypothetical fact scenarios, as well as in real life.

As this is the second edition of the text, it is useful to consider some of the important changes that the author has made to the original. Most notable is that it has an added chapter on securities, and it also features reworked and updated chapters on dispute resolution and electronic banking, reflecting changes in the law. For the rest, however, the content of the text closely resembles that of the first edition, and only a small number of additional questions have been added. No revisions with regard to the ePayment Code have been made.

Students will likely relish this text as it generally provides well-structured and clear, accurate answers to problem-style questions. 'Examiner's comments' and some further points to 'keep in mind' follow each answer and the answers can therefore not be seen to be model answers. The text should also appeal to lecturers of banking law who may be able to create their own hypothetical problems for use in class or tutorial discussions based on Edwards' examples.

Despite its appealing qualities, the text has a few shortcomings. The layout and structure of the short discussion of some legal issues at the start of each chapter is not student-friendly. The discussion is cryptic, somewhat superficial, and proceeds without any headings or numbering. So, for example, in chapter 1, 3 pages cover a

³ The first edition was published in 1999 under the title *Banking Transactions Law*.

⁴ Edwards, above n 2, vii.

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number of diverse topics ranging from bank accounts of minors, trust accounts, joint accounts, the definition of banking business, combination of accounts, and appropriation.⁵ Also, cross-references to Tyree's book would have assisted the student and would have linked the two texts more substantively. Further, a greater number of new questions and also questions relating to other important aspects of banking law, such as anti money-laundering and counter terrorism-financing legislation, counterfeiting and the regulatory framework, would have been welcomed. Some essay-style questions on topics that do not lend themselves to problem-style questions could have been included on these topics. Lastly, although the text is aimed at assisting students with answering problem-style questions, the book contains no discussion of a general approach to answering hypothetical problem questions. An explanation of a structured problem-solving process starting with identifying the relevant legal issues, followed by the application of the relevant law to the facts, would have assisted students further, and would have contributed significantly to the overall objective of the book.

In conclusion, these texts play an important role in the literature available for teaching banking law in Australia, and will be valuable to students and teachers alike.

⁵ Ibid, 1–4.